

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

May 18, 2004

Ref: 8EPR-SR

Michael W. Fraser
Thomas, Dean, & Hoskins, Inc.
690 North Meridian, Suite 101
Kalispell, MT 59901

Dear Michael:

I am writing on behalf of the U.S. Environmental Protection Agency (EPA) to address potential Superfund liability concerns regarding the Johnston Acres water and sewer project in Libby, MT. The Johnston Acres project is a publicly funded project that involves excavation of trenches and installation of piping across a wide area of the City of Libby, both within public rights of way and private property. The work is within the study area of the Libby Superfund Site and there is the potential to encounter asbestos-contaminated soil. EPA understands that this work is critical to developing the city's infrastructure and improving the environment. The City's engineering contractor, Thomas, Dean, and Hoskins (TD&H), is concerned that fear of Superfund liability will deter potential contractors from bidding on the work.

TD&H has been proactive in seeking information and guidance from EPA as planning for the project proceeds. EPA and our representatives have met with TD&H and provided written guidance and sampling information. We are pleased with the degree of cooperation. It is our understanding that TD&H is currently forming a work approach that incorporates our recommendations. While it is likely that some contamination will be encountered during the conduct of the work, we are confident the work can proceed safely and in a timely manner if our recommendations are followed and the work is accomplished in a competent manner. EPA will continue to assist and provide guidance during the scoping and conduct of the work as required. While ultimately the contractor is responsible for their work and the health and safety of their employees, EPA will also monitor work place conditions to help ensure the safety of the work and will not hesitate to stop work if we observe any unacceptable work practices. We will also assist TD&H in monitoring for conditions that may require more direct EPA involvement. This should provide some comfort to potential bidders.

While EPA generally cannot exempt contractors or others from potential liability, contractors employed to conduct the work should not be overly concerned provided they follow general guidance from EPA. In Libby, EPA has determined it will not seek recover cleanup



costs from local businesses provided (1) they were not involved in the sale or distribution of the products that caused the contamination in Libby, (2) they take appropriate precautions when handling vermiculite and avoid where possible activities which may spread contamination, and (3) allow EPA to conduct any response actions necessary. While this does not apply to non-local businesses, it nonetheless clearly demonstrates EPA's position on this issue. A copy of this "statement" is attached. Any contractors working on the project should meet these requirements provided they follow the work plan and guidance given by EPA. Again, EPA will stop work if we observe any unsafe conditions or unacceptable work practices.

We look forward to working with you on the Johnston Acres Project. It is our hope that the project can move forward in a safe and timely manner without undue concern regarding liability or health and safety. If you have any additional questions, please feel free to contact me at (303) 312-6748.

Sincerely,

A handwritten signature in black ink, appearing to read 'JCE', with a stylized, flowing script.

Jim Christiansen
Remedial Project Manager

Attachment

cc: Tony Berget, Mayor of Libby



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LIBBY #1

Statement Regarding EPA's Enforcement Discretion
For Local Business Owners in Libby, Montana

The United States Environmental Protection Agency ("EPA") has determined that it will **NOT** seek to recover from local business owners in Libby, Montana the costs associated with the cleanup of amphibole asbestos contamination on those individuals' property where each local business owner meets the following criteria:

- 1) The business owner has provided, and will continue to provide, access to EPA for its response actions;
- 2) The business owner has **NOT** actively participated in a for-profit enterprise of distributing, treating, storing or disposing of Libby vermiculite;
- 3) The business owner will take appropriate precautions in handling any visible vermiculite in and around his or her business, avoiding where possible activities which may spread the vermiculite to other locations; and
- 4) The business owner signs the following certification:

I, the undersigned business owner, certify that prior to November 1999, I had no knowledge that the vermiculite on my property contained asbestos.

Print Business Name

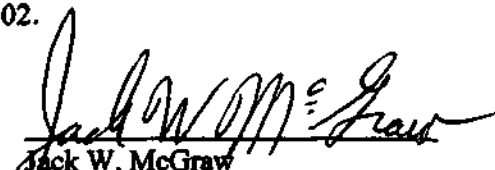
Business Address

Print Business Owner Name

Business Owner Signature

Date

Questions regarding this statement should be directed to Matthew Cohn, EPA Region VIII Legal Enforcement Program at (303) 312-6853. Please send this signed certification to Matthew Cohn at U.S. EPA- ENF-L, 999 18th St., Suite 300, Denver, CO 80202.


Jack W. McGraw
Acting Regional Administrator